

PROTOCOL TO THE AIR TRANSPORT AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE KINGDOM OF THAILAND,
SIGNED AT BANGKOK MAY 8, 1996

The Government of the United States of America and the Government of the Kingdom of Thailand (hereinafter "the Parties");

Recalling the Air Transport Agreement between the Government of the United States of America and the Government of the Kingdom of Thailand, signed at Bangkok May 8, 1996, with Annex ("the Agreement") and its accompanying Memorandum of Understanding ("the MOU");

Desiring to promote an international aviation system for all-cargo services that maximizes competition among airlines in the marketplace with minimum government interference and regulations;

Desiring to facilitate the expansion of international all-cargo services in order to offer the shipping public the widest variety of services at the lowest price;

Have agreed to this Protocol amending the Agreement and the MOU:

Article A

1. Article 1, paragraph 3 of the Agreement shall be deleted in its entirety and replaced with the following:

"Air transportation" means the scheduled public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire, and the non-scheduled public carriage by aircraft of cargo and mail for remuneration or hire;

2. Article 8, paragraph 3 of the Agreement shall be deleted in its entirety and replaced with the following:

Each designated airline, in conducting passenger or combination services, shall have the right, on the basis of reciprocity, to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services charges shall be just and reasonable.

Each designated airline, in conducting all-cargo services, shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

3. The following new paragraph shall be added to Article 8:

8. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

4. Article 11 of the Agreement shall hereinafter apply only to passenger and combination services and shall no longer apply to all-cargo services. Article 11 of the Agreement shall be retitled as follows:

Article 11

Fair Competition for Passenger and Combination Services

5. The following text shall be added after Article 11 of the Agreement and shall apply to all-cargo services:

Article 11 bis

Fair Competition for All-Cargo Services

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the all-cargo international air transportation governed by this Agreement.

2. Each Party shall allow each designated airline to determine the frequency and capacity of the all-cargo international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of all-cargo service, or the aircraft type or types operated in all-cargo service by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. Neither Party shall impose on the other Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic of all-cargo services that would be inconsistent with the purposes of this Agreement.
4. Neither Party shall require, for all-cargo services, the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.
6. Article 12 of the Agreement shall apply only to pricing for passenger services and shall no longer apply to pricing for cargo services. Article 12 of the Agreement shall be retitled as follows:

Article 12

Passenger Pricing

7. The following text shall be added after Article 12 of the Agreement and shall apply to pricing for cargo services:

Article 12 bis

Cargo Pricing [Mutual Disapproval]

1. Each Party shall allow prices for air transportation of cargo to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:
- a. prevention of predatory or discriminatory prices or practices;

b. protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and

c. protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

2. Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party or by airlines of third countries of prices charged by charterers to the public for traffic originating in the territory of that other Party.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party or by an airline of a third country for international air transportation of cargo between the territories of the Parties, or (b) an airline of one Party for international air transportation of cargo between the territory of the other Party and a third country, including in both cases transportation on an interline or intra-line basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of Article 12 bis, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 45 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall go into or continue in effect.

8. The existing Annex to the Agreement shall be retitled as follows:

ANNEX I

Scheduled Air Transportation

9. Section 2 of Annex I shall be deleted in its entirety and replaced with the following:

Section 2

Routes for All-Cargo Services

A. Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled all-cargo international air transportation between points on the following routes:

1. Routes for the airline or airlines designated by the Government of the United States:

- a. From points behind the United States via the United States and intermediate points to a point or points in Thailand and beyond.
- b. Between Thailand and any point or points.

2. Routes for the airline or airlines designated by the Government of Thailand:

- a. From points behind Thailand via Thailand and intermediate points to a point or points in the United States and beyond.
- b. Between the United States and any point or points.

B. Each designated airline may, in conducting scheduled all-cargo international air transportation, on any or all flights and at its option:

- 1. operate flights in either or both directions;
- 2. combine different flight numbers within one aircraft operation;
- 3. serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- 4. omit stops at any point or points;
- 5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
- 6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

10. Section 3 of Annex I shall hereinafter apply only to passenger and combination services and shall no longer apply to all-cargo services. Section 3 shall be retitled as follows:

Section 3Passenger and Combination Change of Gauge

11. The following new section shall be added after Section 3 of Annex I and shall apply to all-cargo services:

Section 4All-Cargo Change of Gauge

On any segment or segments of the routes in Section 2 above, any designated airline may perform all-cargo international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated.

12. The following new Annex shall be added to the Agreement and shall apply to cargo charter air services:

ANNEX II**Charter Air Transportation of Cargo**Section 1

A. Airlines of each Party designated under this Annex to operate cargo charters shall, in accordance with the terms of their designation, have the right to carry international charter traffic of cargo (including, but not limited to, freight forwarder, and split charters):

1. Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries.

B. In the performance of cargo charters, airlines of each Party designated under this Annex shall also have the right:

1. to make stopovers at any points whether within or outside of the territory of either Party;
2. to carry transit traffic through the other Party's territory;

3. to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and

4. to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated

C. Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

Any airline designated by either Party performing international charter air transportation of cargo originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

Section 3

Neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

13. Section II of the MOU shall be deleted in its entirety.
14. Section III of the MOU shall be amended by:
 - (a) Renumbering it as Section "II".
 - (b) Deleting the phrase "or all-cargo" from Subsection A.1.
 - (c) Deleting the phrase "and/or all-cargo" from Subsection A.2.
15. Section IV of the MOU shall be amended by renumbering it as Section "III".

16. Section V of the MOU shall be amended by:
- (a) Renumbering it as Section "IV".
 - (b) Deleting "or Section II" from subsection B wherever it appears.
 - (c) Deleting "or Section II" from subsection C.
17. Section VI of the MOU shall be amended by renumbering it as Section "V".

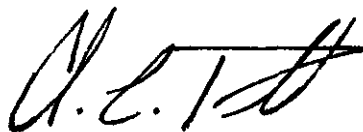
Article B

This Protocol shall be provisionally applied from the date of signature and shall enter into force upon an exchange of diplomatic notes confirming completion of all necessary internal procedures by each Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Bangkok, Thailand, this 18th day of October, 2003, in two originals, in the English and Thai languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
THE KINGDOM OF THAILAND:

